

Message Text

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ORIGIN NEA-10

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DRAFTED BY NEA/INS:DKUX:EI
APPROVED BY L - MR. ALDRICH
-----310035Z 038708 /60

O 310003Z DEC 76
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI IMMEDIATE
INFO AMCONSUL BOMBAY IMMEDIATE
AMCONSUL CALCUTTA IMMEDIATE
AMCONSUL MADRAS IMMEDIATE

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E.O. 11652: GDS

TAGS: PFOR, IN

SUBJECT: JHIRAD EXTRADITION CASE

1. THE ACTING SECRETARY HAS CONCLUDED HIS REVIEW OF THE JHIRAD EXTRADITION CASE AND DECIDED THAT EXTRADITION WOULD BE CONTRARY TO PROVISIONS OF ARTICLE 5 OF THE TREATY. TEXT OF NOTE TO INDIAN EMBASSY ELABORATING DECISION TRANSMITTED BY SEPTTEL.

2. IN HANDING OVER NOTE DECEMBER 30 TO INDIAN EMBASSY (POLOFF RAJAN), ACTING LEGAL ADVISER ALDRICH EXPLAINED THAT FOR REASONS ELABORATED IN NOTE ACTING SECRETARY CONCLUDED THAT HE WAS UNABLE TO ACCEPT THE MAGISTRATE'S FINDING THAT STATUTE OF LIMITATIONS STILL APPLIED TO FINAL TWO EMBEZZLEMENT CHARGES. ALDRICH EXPLAINED THAT OVERTURNING FINDING OF JUDGE IN EXTRADITION CASE ON A TECHNICAL POINT
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OF LAW WAS UNUSUAL, BUT NOT UNPRECEDENTED. HE NOTED MOST RECENT SIMILAR CASE WAS IN MIDDLE 60'S WHEN SECRETARY RUSK OVERTURNED COURT FINDING IN CASE INVOLVING EXTRADITION OF CANADIAN LABOR LEADER WHO WAS WANTED ON PERJURY CHARGE.

3. ALDRICH EXPLAINED THAT THERE HAVE BEEN A FEW OTHER

CASES OF REFUSAL TO EXTRADITE, BUT THESE HAD INVOLVED
POLITICAL CONSIDERATIONS, SUCH AS INDIVIDUAL WANTED BY

COMMUNIST COUNTRY, ETC., NOT A FACTOR IN JHIRAD CASE.
ALDRICH CALLED RAJAN'S ATTENTION TO FINAL PARAGRAPH OF
NOTE STATING THAT ACTING SECRETARY CONCLUDED THAT JHIRAD
HAD FAILED TO PROVE POLITICAL MOTIVE ON PART OF INDIA IN
SEEKING HIS RETURN.

4. ALDRICH INDICATED THAT WE WOULD RESPOND TO ANY PRESS
QUESTIONS ON THE CASE ALONG THE LINES OF THE NOTE, STRESS-
ING THAT DECISION NOT TO EXTRADITE WAS BASED ON TECHNICAL-
LEGAL CONSIDERATIONS AND NOT BECAUSE OF POLITICAL CHARGES
RAISED BY JHIRAD. IN RESPONSE TO RAJAN'S QUERY REGARDING
THE POLITICAL ASYLUM REQUEST, ALDRICH EXPLAINED THAT THIS
WAS A NULLITY SINCE A PERMANENT RESIDENT OF THE UNITED
STATES, SUCH AS JHIRAD, COULD NOT LEGITIMATELY CLAIM
POLITICAL ASYLUM, AS HE WAS NOT SUBJECT TO DEPORTATION.
IN ANY EVENT, ISSUES RAISED BY POLITICAL ASYLUM REQUEST
WERE THE SAME AS THOSE ADDRESSED IN ARTICLE 6 OF THE
TREATY AND ALDRICH EMPHASIZED THAT DEPARTMENT CONCLUDED
JHIRAD HAD NOT MADE A CASE ON THESE GROUNDS.

5. COMMENT: DEPARTMENT WILL NOW BE INFORMING MAGISTRATE
IN NEW YORK OF ACTING SECRETARY'S DECISION AND HE WILL
PRESUMABLY RELEASE JHIRAD FROM CUSTODY OF COURT. NO
PUBLIC ANNOUNCEMENT IS INVOLVED IN THE CASE BUT WE ASSUME
THAT WORD WILL QUICKLY SURFACE IN THE PRESS. CONTINGENCY
PRESS GUIDANCE IS BEING PREPARED AND WILL BE CABLED TO
DELHI. WE SUGGEST THAT IN ANY DISCUSSIONS WITH GOI RE-
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GARDING THE CASE, EMBASSY SHOULD FOLLOW THE POINTS MADE
IN THE NOTE TO THE INDIAN EMBASSY (SEPTTEL) AND THE
COMMENTS OF ACTING LEGAL ADVISER.
ROBINSON

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